

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

COREY L. HARRIS,	:	
Petitioner,	:	C.A. No. 05-111Erie
	:	
v.	:	
	:	Magistrate Judge Baxter
WARDEN JAMES VESHECCO, et al.,	:	
Respondents	:	Electronically Filed
	:	

**MOTION TO DISMISS AMENDED PETITION UNDER 28 U.S.C. §2254 FOR
WRIT OF HABEAS CORPUS**

AND NOW comes the Respondent, the Commonwealth, as its interests are represented by and through Thomas S. Kubinski, Esquire, counsel for the Department of Public Welfare, and the Erie County Domestic Relations Section, through Heather L. Purcell, Court Solicitor, and files the within Motion to Dismiss Amended Petition Under 28 U.S.C. §2254 for Writ of Habeas Corpus as follows:

1. As a result of his failure to make payments on two separate child support orders, dated March 20, 2006 at Erie County Court of Common Pleas dockets NS200200563 and NS200202708, Petitioner was ordered to appear for a Support Enforcement Conference on November 21, 2007. *See* Orders, March 20, 2006, copies of which are attached hereto as Exhibit 1; *see also Enforcement Diary*, October 31, 2007, copies of which are attached hereto as Exhibit 2.

2. Petitioner filed a Motion for Continues [sic] of the November 21, 2007 Support Enforcement Conference, which the Honorable William R. Cunningham denied. *See Motion for Continues*, a copy of which is attached hereto as Exhibit 3.

3. Petitioner failed to appear for the November 21, 2007 Support Enforcement Conference. As a result, Judge Cunningham issued a Bench Warrant for Petitioner's arrest. *See Bench Warrants*, copies of which are attached hereto as Exhibit 4.

4. On November 29, 2007, at a time when he was not in custody, Petitioner filed his Motion to Revisit the Issue of Writ of Habeas Corpus, which this Court granted on December 4, 2007.

5. Petitioner, on December 21, 2007, was picked up on the bench warrants issued by Judge Cunningham. *See Copies of the Erie County Court of Common Pleas Domestic Relations Section Docket Numbers NS200200563 and NS200202708 relevant excerpts attached hereto as Exhibits 5-6.*

6. Following a December 21, 2007 hearing, Judge Cunningham found Petitioner in contempt of court for his failure to pay child support under Erie County Court of Common Pleas dockets NS200200563 and NS200202708, as well as for his failure to appear for the November 21, 2007 Support Enforcement Conference. As a result, Petitioner was incarcerated in the Erie County Prison for three months or until payment of a \$500.00 purge. *See December 21, 2007 Orders*, copies of which are attached hereto as Exhibit 7.

7. Petitioner, on December 31, 2007, was released from incarceration upon satisfaction of the purge. *See Releases*, copies of which are attached to the bottom of the December 21, 2007 Orders and attached hereto as Exhibit 8.

8. On January 3, 2008, Petitioner, no longer in custody, filed his Amended Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254 (hereinafter “Amended Petition”).

9. As a result, this court lacks jurisdiction to entertain Petitioner’s Amended Petition.

10. Even if the court had jurisdiction to entertain Petitioner’s Amended Petition, the Petition is now moot.

11. Wherefore, Respondent respectfully requests that this Honorable Court dismiss the Amended Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus in the above-captioned matter.

Respectfully submitted,

s/ Thomas S. Kubinski
Thomas S. Kubinski, Esquire
Pa. I.D. No. 25936
Attorney for the Department of Public Welfare
Kubinski, Susko & Schonhaler
135 East Sixth Street 16501
(814) 455-7612
(814) 461-8585 (facsimile)
tom@ksslawfirm.com

s/ Heather L. Purcell
Heather L. Purcell, Esquire
Pa. I.D. No. 87466
Court Administration
Erie County Courthouse
140 West Sixth Street
Erie, Pennsylvania 16501
(814) 451-6317
(814) 451-6223 (facsimile)
Hpurcell@eriecountygov.org

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

COREY HARRIS

Petitioner,

v.

**JAMES VESHECCO,
Respondent**

:
:
:
:
:
:
:
:
:
:

C.A. No. 05-111 Erie

CERTIFICATE OF SERVICE

I, Heather L. Purcell, Esq., hereby certify that a true and correct copy of the foregoing Motion to Dismiss Amended Petition Under 28 U.S.C. §2254 for Writ of Habeas Corpus was served upon the following by United States First Class Mail:

Corey L. Harris
PO Box 3618
Erie, PA 16508

Date: February 6, 2008

s/ Heather L. Purcell
Heather L. Purcell, Esquire